

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-1093V

Filed: February 10, 2016

Unpublished

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ANTHONY NELSON,

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Petitioner,

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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Damages Decision Based on Proffer;  
Influenza ("flu") Vaccine; Shoulder Injury  
Related to Vaccine Administration  
("SIRVA"); Special Processing Unit  
("SPU")

*Maximillian Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Glenn MacLeod, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

**Dorsey**, Chief Special Master:

On September 29, 2015, Anthony Nelson ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act" or "Program"). Petitioner alleged that as a result of an influenza ("flu") vaccination on December 4, 2014, he suffered a left shoulder injury. The case was assigned to the Special Processing Unit ("SPU") of the Office of Special Masters.

On December 18, 2015, the undersigned issued a ruling on entitlement finding petitioner entitled to compensation for SIRVA. On February 10, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$85,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012)(Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

with the proffered award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$85,000.00 in the form of a check payable to petitioner, Anthony Nelson.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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**ANTHONY NELSON,**

Petitioner,

v.

**SECRETARY OF HEALTH  
AND HUMAN SERVICES,**

Respondent.

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**No. 15-1093V (ECF)  
CHIEF SPECIAL MASTER  
NORA BETH DORSEY**

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Compensation for Vaccine Injury-Related Items**

On December 18, 2015, the Chief Special Master issued a Ruling on Entitlement finding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”). Based on the evidence of record, respondent proffers that petitioner should be awarded \$85,000.00. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Respondent recommends that the compensation provided to petitioner be made through a lump sum payment of **\$85,000.00** in the form of a check payable to petitioner.<sup>1</sup> Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

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<sup>1</sup> Should petitioner die prior to the entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

Respectfully submitted,

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Dated: February 9, 2016